

UNITED STATES DISTRICT COURT?  
SOUTHERN DISTRICT OF NEW YORK

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CYPRESS HOLDINGS, III, L.P., individually  
and derivatively on behalf of SPORT-BLX,  
INC.,

Plaintiff,

-V-

Civil Action No.:  
1:22-cv-1243-LGS

GEORGE HALL, JOSEPH DE PERIO, DANIEL  
STRAUSS, FRANCIS RUCHALSKI, CESAR BAEZ,  
CHRISTOPHER JOHNSON, SPORT-BLX INC.,  
SPORT-BLX SECURITIES, INC., CLINTON GROUP  
INC., AND GLASSBRIDGE ENTERPRISES INC.,  
Defendants.

-----X  
SPORT-BLX, INC., individually and  
derivatively on behalf of its shareholders,

Plaintiff,

-V-

Case No.:  
1:22-cv-8111-LGS

MICHAEL M. SALERNO, CYPRESS HOLDINGS, III,  
L.P.,

Defendants.

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DATE: May 1, 2023  
TIME: 9:43 A.M.

EXAMINATION BEFORE TRIAL of the  
Defendant, Michael Salerno, taken by Mr.  
Sack, pursuant to Order, held at the  
offices of Hindy Freilich, a Notary Public  
of the State of New York.

1  
2 execution page, and you have a separate set  
3 of certifications of accuracy there, as  
4 well, is that right?

5 A. Yes.

6 Q. Also on March 31, 2023?

7 A. Yes.

8 Q. If you could go to the second  
9 page from the back.

10 MR. PEARLSON: The one we were  
11 just on?

12 MR. SACK: We're still on the  
13 same document. The one before the  
14 two pages we just looked at.

15 MR. PEARLSON: Which page?  
16 Second to last page or the third to  
17 last page?

18 MR. SACK: Third to last page.  
19 Thank you.

20 Q. Do you see an answer -- do you  
21 see a question and a set of answers there  
22 under custody, and it says number 2, pooled  
23 investment vehicles and trusts. Do you --  
24 at A 1, "Do you or a related person act as  
25 a general partner, managing member or

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2 person serving in a similar capacity for  
3 any pooled investment vehicle for which you  
4 are the advisor to the pooled investment  
5 vehicle or for which you are the advisor to  
6 one or more of the investors in the pooled  
7 investment vehicle."

8 And do you see the response to  
9 that question is yes?

10 A. I do see that.

11 Q. What's a pooled investment  
12 vehicle?

13 A. In this context, I would have  
14 to ask our counsel, who completed it.

15 Q. But you're responsible for the  
16 accuracy of the information. You don't  
17 know what a pooled investment vehicle is?

18 A. In this context, I would have  
19 to ask him.

20 Q. Well, in any context, as a  
21 registered investment advisor, what's your  
22 understanding of what a pooled investment  
23 vehicle is?

24 A. As a registered investment  
25 advisor, my understanding of a pooled

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2 investment would be the grouping of  
3 multiple investments under one omnibus  
4 account.

5 Q. And would it also be a grouping  
6 of multiple investors in one vehicle or one  
7 partnership or one investment agreement?

8 A. In general or in this context?

9 Q. In any context? Is that an  
10 accurate -- if multiple investors invest in  
11 a partnership, would that be a pooled  
12 investment vehicle?

13 A. I'm not sure if it would be in  
14 this context. It might be. But I don't --  
15 in this context, I would have to rely on  
16 counsel, which I did.

17 Q. Well, counsel said yes. So  
18 what did counsel -- counsel had to have  
19 some basis -- withdrawn.

20 You said yes, because this was  
21 your statement in this form, wasn't it?  
22 Didn't you say yes?

23 A. No. I signed the form. I'm  
24 responsible for what's in it. But I relied  
25 on counsel.

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2 you're saying the entity is a fund?

3 Q. No. I'm just reading the first  
4 sentence. "A pooled investment vehicle is  
5 an entity often referred to as a fund that  
6 an advisor creates to pool money from  
7 multiple investors."

8 A. No. I do not have a fund.

9 Q. That's not my question.

10 Are you a manager or general  
11 partner of a pooled investment vehicle, a  
12 fund being an example or a way of referring  
13 to it. It doesn't say a definition of a  
14 fund. It's a definition of a pooled  
15 investment vehicle.

16 A. Again, based on my  
17 interpretation of what this document says  
18 that you've put in front of me, it's saying  
19 it's a fund. I do not run a fund.

20 Q. Mr. Salerno, are you the  
21 general partner or managing member of an --

22 Mr. Salerno, are you or an  
23 entity you control a general partner or  
24 managing member of any entity that pools  
25 money from multiple investors?

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2 THE WITNESS: Can you read it  
3 back, please.

4 (Whereupon, a portion of the  
5 testimony was read back.)

6 A. Yes.

7 Q. What are those? Please name  
8 them.

9 A. Name what?

10 Q. Name the -- are you the  
11 managing member of any entity or general  
12 partner, please name those entities?

13 A. Oh. The entities. Cypress  
14 III.

15 Q. Any others?

16 A. I don't think so.

17 Q. And by Cypress III, you mean  
18 Cypress Holdings, III, L.P.?

19 A. Yes.

20 Q. Do you have a problem if we  
21 just refer to it as Cypress III for  
22 shorthand during the deposition?

23 A. I think that works.

24 Q. Did you -- were you the general  
25 partner or managing member of any entities

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2 that pool money from multiple investors  
3 before Cypress III?

4 A. I'm concerned with the context  
5 that you're asking me this, because  
6 Cypress III is not a pooled investment.  
7 Cypress III is a limited partnership that I  
8 set up for investments for myself, which I  
9 have let some friends into. You're  
10 characterizing it as a pooled investment,  
11 which I don't think is accurate.

12 Q. Well, the friends are not part  
13 of your family and they're investing in the  
14 fund alongside you, correct? They're --  
15 correct?

16 A. Some of them are family.

17 Q. But it doesn't matter --  
18 withdrawn.

19 So what would you call  
20 Cypress III?

21 A. A limited partnership.

22 Q. That you manage, correct?

23 A. Correct.

24 Q. And that you manage it on  
25 behalf of yourself and other investors?

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2 A. Correct.

3 Q. And you and your wife actually  
4 had a minority interest in this limited  
5 partnership as of February 2019, isn't that  
6 right?

7 A. I'm not sure. We may have had  
8 a majority interest at that time. I would  
9 have to look.

10 Q. All right. We will look at it.  
11 As of now, it's a minority  
12 interest, correct?

13 A. As we sit here today, yes.

14 Q. It's 25 percent or less of the  
15 partnership, would you say?

16 A. No.

17 Q. How much -- what's the  
18 percentage today?

19 A. I'm not sure. I think it's  
20 somewhere around 40 percent.

21 Q. So this is a limited  
22 partnership that you manage for yourself  
23 and for others in which you are a minority  
24 owner? Is that an accurate description?

25 A. Today, yes.

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2 Q. And it holds the assets of  
3 multiple investors?

4 A. I'm concerned -- assets of  
5 investors or assets of investments?

6 Q. Does it hold the assets of  
7 multiple investors?

8 A. It accepted cash from multiple  
9 investors and today holds assets of  
10 investments.

11 Q. And it holds the financial  
12 interests of multiple investors, correct?

13 A. What's the definition of  
14 financial interest?

15 Q. Does it hold -- do the LPs have  
16 separate interests from your own,  
17 Mr. Salerno, in this limited partnership?

18 A. What LPs? I'm sorry.

19 Q. Are there limited partners in  
20 Cypress III?

21 A. Limited partners, yes.

22 Q. The limited partners of  
23 Cypress III have rights to the money in  
24 that fund that are separate and apart from  
25 whatever rights you have to the money in

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2 eight people, correct?

3 A. Correct.

4 Q. And so is it fair to say that  
5 this Cypress III holds the assets of those  
6 multiple investors?

7 A. Yes.

8 Q. In the same -- let's take this  
9 -- I'll set this aside, Mr. Salerno.  
10 Please go back to this document that is  
11 Exhibit 1. And I'm going to direct you now  
12 to, if you wouldn't mind counting eight  
13 pages from the back, and I think we'll be  
14 able to find --

15 A. From the back?

16 Q. From the back.

17 A. Sure.

18 Q. Excuse me. My mistake. It's  
19 seven pages from the back. Excuse me. And  
20 then we'll make sure we're on the same  
21 page.

22 Do you see a box in the middle  
23 of the page? I think -- I'm sorry,  
24 Mr. Salerno, if I could take this document,  
25 I'll direct you to the page.

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2           Q.       They told you that the rent --  
3   the payment for the space would go to  
4   Clinton Group.   That wasn't a surprise to  
5   you.

6           A.       Yes, it was.

7           Q.       You knew that going in, didn't  
8   you?

9           A.       No.

10          Q.       You didn't know the business  
11   was housed in Clinton Group?

12                   MR. PEARLSON:  Objection.

13               Which question are you asking him to  
14   answer?

15          Q.       So you didn't know when you  
16   invested that the business was going to be  
17   paying for use of space at Clinton Group?

18          A.       No.

19          Q.       So the offices you visited  
20   where Sport-BLX was was the Clinton Group,  
21   correct?

22          A.       They were the Clinton Group's  
23   offices.

24          Q.       And the space, the rental  
25   expense projected was \$500,000 and --

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2 correct, that was the annual rental expense  
3 projected before you invested. You knew  
4 that, correct?

5 A. I recall that was on the pro  
6 forma.

7 Q. Did anyone ever tell you the  
8 business was going to move from the Clinton  
9 Group to somewhere else?

10 A. No one ever told me it was  
11 going to be in the Clinton Group.

12 Q. Where did you think it was  
13 going to be?

14 A. At some location.

15 Q. Excuse me. You thought George  
16 Hall and Joe De Perio --

17 MR. PEARLSON: Can you let him  
18 finish his answer, please.

19 Q. Sure. At some location, are  
20 you finished?

21 A. Yes.

22 Q. At what location?

23 A. To be determined.

24 Q. So you thought George Hall and  
25 Joe De Perio were going to be shuttling

1

2 back and forth from the Clinton Group

3 office to somewhere else to work on

4 Sport-BLX?

5 A. So are you saying -- I'm not

6 understanding your question because --

7 Q. Go ahead.

8 A. Because they were employees of

9 Clinton Group, so they would be in Clinton

10 Group's office. They also had a

11 Glassbridge company that, I believe, had a

12 different office. They also had other

13 entities that had different offices.

14 So there was nothing ever told

15 to me that they were going to be paying

16 George Hall \$500,000, because I would have

17 objected to that.

18 Q. When did you -- well, no one

19 ever told you they were paying George Hall

20 \$500,000, did they?

21 A. The Clinton Group, I'm sorry,

22 which is solely owned and is George Hall's

23 entity.

24 Q. When did you find out that it

25 was the Clinton Group that was receiving

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2 Q. You may have, you just don't  
3 know one way or the other?

4 A. I don't recall. I don't recall  
5 a binder.

6 Q. At this meeting, did you go  
7 over the projected financials of Sport-BLX?

8 A. I don't recall what we went  
9 specifically over in the meeting.

10 Q. Did you go over projected  
11 expenses and revenues for the business?

12 A. At that meeting, I don't recall  
13 what we went over.

14 Q. Did you ever have a meeting  
15 before signing the stock purchase  
16 agreements where you went over with Joe De  
17 Perio and/or George Hall, the projected  
18 financials of the company?

19 A. If you define a meeting by  
20 telephone conversation, as well as in  
21 person, I'm confident that the answer is  
22 yes.

23 Q. Let me break it down. Do you  
24 recall a physical meeting, an in-person  
25 meeting where you and Joe and/or George

1

2 Hall went over the financial projections  
3 for the company before February 28th?

4 A. Again, when I was there in  
5 person, I don't recall specifically what we  
6 went over. But I know before the -- I  
7 signed, I did discuss with them the pro  
8 forma.

9 Q. And it was either, you're  
10 saying, by phone or in person, you don't  
11 remember which now?

12 A. I don't recall.

13 Q. How long was this meeting --  
14 withdrawn.

15 How long was this discussion  
16 that you're referring to, where you were  
17 discussing the pro formas?

18 A. I don't recall.

19 Q. Was it longer than 30 minutes?

20 A. I don't recall.

21 Q. You have no recollection  
22 whether it was a brief five or ten-minute  
23 call or more like an hour or more  
24 discussion?

25 A. I'm speculating, but it's more

1  
2 investment decks that were provided to me.

3 (Whereupon, an off-the-record  
4 discussion was held.)

5 Q. I'm going to show you some  
6 materials and I'll ask you a few questions  
7 about those.

8 We'll call it Salerno  
9 Deposition Exhibit 13, Cypress Bates stamp  
10 1607 to 1610.

11 Are these the set of frequently  
12 asked questions that you saw in early 2019,  
13 Mr. Salerno?

14 A. They appear to be.

15 Q. And you saw a document like  
16 this in the data room, correct?

17 A. I don't know how I got it, but  
18 yes, this was what I refer to as the  
19 frequent -- the FAQ, frequently asked  
20 questions.

21 Q. Please take a look at the third  
22 page of the document, 1609 and item 10. It  
23 lists three ways, three responses to the  
24 question how does Sport-BLX make money. It  
25 says, number 1, "We will charge initial

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2           A.       However, that FAQ was prior to  
3 the pro forma being provided.

4           Q.       Well, you said you relied on  
5 the FAQ when you invested, isn't that  
6 right? That was all before February 28th.  
7 It was part of the mix of information that  
8 you had when you invested, correct?

9           A.       It was a part of the  
10 information, yes.

11          Q.       This pro forma, you reviewed it  
12 in the data room?

13          A.       I'm sorry. Rephrase the  
14 question.

15          Q.       Did you review data in the data  
16 room that you were given access to?

17          A.       No.

18          Q.       You didn't go into the data  
19 room and look at any of the data?

20          A.       Yes.

21          Q.       You did go into the data room,  
22 correct?

23          A.       I went into the data room, I  
24 downloaded the information and I reviewed  
25 it in my office.

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2 Q. That's another conversation you  
3 secretly recorded?

4 A. That I recorded of Joe De Perio  
5 and I talking about the wiring  
6 instructions.

7 Q. When did you do that?

8 A. Before the wire was sent.

9 Q. So you started recording Joe De  
10 Perio within a week of your investing in  
11 the company, you started recording?

12 A. I think there is one, yes.

13 Q. No, no. Not I think there is  
14 one. Did you secretly -- did you start to  
15 secretly record conversations within  
16 approximately a week of making your  
17 investment in this company?

18 A. Yes, it's very possible.

19 Q. Why?

20 A. Because at that point, I was  
21 already concerned about the investment  
22 being made. And if I didn't do it, that  
23 they were going to hold me up with a  
24 contract dispute.

25 Q. Within one week you were

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2 concerned, you could have disclosed their  
3 names in connection with the broker dealer  
4 application in August 2019?

5 MR. PEARLSON: Objection.

6 Go ahead, you can answer. I  
7 just objected.

8 A. I don't believe so. I don't  
9 believe that I would have been doing the  
10 right thing by disclosing their names as  
11 partners of Cypress.

12 Q. Okay.

13 MR. SACK: Hindy, could you  
14 please read my question back and  
15 let's see if Mr. Salerno can answer  
16 it.

17 (Whereupon, a portion of the  
18 testimony was read back.)

19 Q. The question was could you have  
20 done that?

21 A. Your question was -- that's not  
22 what your question was.

23 Q. The question was, as far as  
24 your limited partners were concerned, you,  
25 as general partner, could have disclosed

1

2 their names to Sport-BLX?

3 MR. PEARLSON: I'm going to

4 object to that.

5 Go ahead.

6 A. Did I have discretion to

7 disclose their name? I would think yes.

8 If you're -- your question was would they

9 have allowed it, and I'm paraphrasing. I

10 don't think I can make that determination.

11 Q. You didn't ask them, did you?

12 A. No.

13 Q. So you don't even know whether

14 -- what they would decide about whether to

15 disclose their names, correct?

16 A. I did not ask them that.

17 Q. You made the decision solely on

18 your own?

19 A. That's correct. Well, no. I

20 made the decision with speaking to counsel

21 with regard to whether or not it was really

22 necessary, as well. But at the end of the

23 day, it was my discretion as a Cypress III

24 manager.

25 MR. SACK: Let's show the